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| 10/019,397 | 12/28/2001 | Konstantinos Poulakis | 42120 | 8736 |
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| Mark S Bicks Roylance Abrams Berdo & Goodman Suite 600 1300 19th Street NW Washington, DC 20036 | | | EXAMINER MUSSEY, BARBARA J | |
| | | | ART UNIT 1733 | PAPER NUMBER |
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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/019,397

Applicant(s)

POULAKIS, KONSTANTINOS

Examiner

Barbara J. Musser

Art Unit

1733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 May 2004.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-27 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 11-27 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 11-27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 11, it is unclear what is meant by plastic as rubber is generally not considered a plastic material but claim 22 indicates it is. This is contrary to the generally accepted meaning of plastic in the art. It is suggested that "soft plastic" in claim 11 be changed to --soft plastic or rubber--. For the purposes of examination, the claim is assumed to mean plastic or rubber.

Regarding claims 12-14, it is unclear what the hardness is intended to be as there are several Shore hardness scales, A-D, and a hardness of 50 in Shore A is equivalent to 20 in Shore C, and approximately 13 in Shore D.

Regarding claim 21, it is unclear what is meant by "a coating applied of the shaped strip". For the purposes of examination this is assumed to mean that the coating is applied onto the shaped strip and not that it is of the same material as the shaped strip.

Regarding claim 23, it is unclear what is meant by undercut areas as an undercut is usually either cutting away the underside of something, and Figure 1 shows the "undercuts" are not on the underside, or a notch cut into something, and Figure 1 does

not show the undercuts are notches either. For the purposes of examination, this is assumed to mean the coating is on the top of the strip when inserted into a cushion.

Response to Amendment

3. The declaration filed on 5/11/04 under 37 CFR 1.131 has been considered but is ineffective to overcome the applied reference.

The declaration cannot overcome the reference since applicant has clearly admitted on the record that the subject matter relied on in the reference is prior art and therefore may not be overcome by a declaration or affidavit. (*In re Hellsund*, 474 F.2d 1307, 177 USPQ 170 (CCPA 1973); *In re Garfinkel*, 437 F.2d 1000, 168 USPQ 659 (CCPA 1972); *In re Blout*, 333 F.2d 928, 142 USPQ 193 (CCPA 1964); *In re Lopresti*, 333 F.2d 932, 142 USPQ 177 (CCPA 1964)) (MPEP 715) Applicant clearly states in the admitted prior art

"With the method disclosed in DE 198 08 995 C1, a longitudinal passage adapted to the shape of the shaped strip is arranged within the cushion component. The passage has recesses in its longitudinal layout serving for the engagement of interlocking elements on the shaped strip. ***With this known method***, the foam material is arranged such that the cushion component surrounds the shaped strip contiguously, so that beneficial interlocking of the shaped strip in the cushion material is obtained." (highlighting added), (Page 2)

The highlighted portion "with this known method", clearly indicates that this method, and therefore the material of the reference, was known previously and is admitted as prior art, and a declaration cannot overcome such a statement.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 11, 15, 17, and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Haruda et al.(U.S. Patent 5,343,610).

The reference discloses extrusion coating a non-skid rubber layer onto a plastic core.(Col. 11, ll. 52-56; Col. 12, ll. 56-58; Col. 13, ll. 16-19) The material is flexible since it is woven into a mold.(Abstract) The material is capable of securing a cover to a cushion. The rubber coating increases tear resistance. It is noted that the claim does not require the insertion of the cord into the cushion, but rather only that it is capable of doing so.

Regarding claim 17, extrusion is considered a hot coating method.

6. Claims 11, 15, and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Esler(U.S. Patent 3,876,495).

Esler discloses a flexible cord for seats which has a core formed from polymer fibers which is covered in an extruded foam coating which reduces the slippage of the cord.(Col. 2, ll. 2-17; Col. 3, ll. 48-50; Col. 6, ll. 57) The material is capable of securing a cover to a cushion. The coating increases tear resistance since it decreases the slippage. It is noted that the claim does not require the insertion of the cord into the cushion, but rather only that it is capable of doing so.

Regarding claim 17, extrusion is considered a hot coating method.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 11, 15, 17, 20-24, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schulte in view of Esler, and Maruyama. U.S Patent 6,478,382 is considered an English language translation of DE 19808995 and all column and line numbers refer thereto.

Schulte discloses a flexible shaped strip which serves to secure a cover to a foamed seat cushion having a longitudinal slit into which the strip is applied.(Figure 1; Abstract; Col. 1, ll. 6-13; Col. 4, ll. 3) The part of the strip containing the slit into which the cover is inserted is provided with an anti-slip means.(Col. 3, ll. 52-57) The reference does not disclose what these anti-slip means are. Esler discloses coating a strip used in seats with a foam material to prevent slippage of the strip relative to the material surrounding it.(Col. 2, ll. 2-17; Col. 3, ll. 48-50) Maruyama et al. discloses applying a rubber layer to the outside of a wire which is a strip which secures a cover to a foamed seat cushion.(Col. 2, ll. 4-11; Col. 3, ll. 27-30) Rubber is an anti-slip material and applicant's claim 22 indicates it is considered a plastic material. It would have been obvious to one of ordinary skill in the art at the time the invention was made to coat the

shaped strip of Schulte with a soft plastic material which is anti-slip since Schulte is silent as to the anti-slip material used, since Esler discloses coating a plastic core with a plastic material to prevent slippage of the strip when used in a seat cushion, and since Maruyama et al. discloses it is known to coat strips that perform the same function with rubber, which is an anti-slip material.

Regarding claim 17, extrusion is considered a hot coating method.

Regarding claims 20 and 21, the references do not disclose curing the coating using ultraviolet or electron beam radiation. One in the art would appreciate that any type of material that would form a relatively soft anti-slip coating could be used. Such materials include rubbers, which should be cured to be useful. Since thermal curing would melt the plastic the rubber is coated on, one in the art would appreciate that a different type of cure such as ultraviolet, which is well-known in the curing arts, would be used in place of a thermal cure for rubber coatings. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use ultraviolet radiation to cure the coating on the shaped strip since this would allow curing of the coating without exposing the strip to high temperatures that would degrade the polymer used as the base for the strip.

Regarding claim 22, while Schulte is silent as to the specific material of the anti-slip means, Maruyama discloses coating the shaped strip with rubber. It would have been obvious to one of ordinary skill in the art at the time the invention was made to coat the shaped strip with any conventional anti-slip material such as rubber since such

materials are well-known in general in the art and particularly since Maruyama discloses coating the strip with rubber.(Col. 3, ll. 27-30)

Regarding claim 23, Schulte discloses the anti-slip means are located on the sides and top of the shaped strip while the bottom has increased slip to allow easy placement in a groove in the seat cushion. One in the art reading the reference as a whole would appreciate that the sides of the shaped strip, if coated with an anti-slip material, would make it difficult to place the strip in the groove since the sides of the strip would contain the sides of the groove, and the anti-slip coating would prevent them from moving relative to one another. Therefore, one in the art reading the reference as a whole would appreciate that the sides of the strip could be made without anti-slip coating to allow easy placement of the strip in the groove.

Regarding claim 9, the profile of the shaped strip is round.(Figure 1)

9. Claims 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 11 above, and further in view of Tolle(U.S Patent 4,057,956).

The references cited above do not disclose the hardness of the anti-slip material. Tolle discloses forming an anti-slip layer on a cable wherein the coating has a hardness of 60-70 so that it will be flexible but hard enough to prevent tearing and wear of the coating during use.(Col. 2, ll. 60-61; Col. 3, ll. 55-61) It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the anti-slip layer have a hardness of about 60-70 since this would make it flexible but hard enough to prevent tearing and wear of the coating during use.(Col. 2, ll. 60-61; Col. 3, ll. 55-61)

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10. Claims 16, 18, 19, 25, and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 11 above, and further in view of Engelson(U.S. Patent 5,095,915).

The references cited above do not disclose how the coating is applied to the strip. Engelson discloses that coatings can be conventionally applied to thin strips by extrusion or dip coating.(Col. 4, ll. 31-37) It would have been obvious to one of ordinary skill in the art at the time the invention was made to use any conventional coating method to apply the anti-slip material to the shaped strips such as extrusion or dip coating since they are conventional methods of applying coatings to thin strips(Col. 4, ll. 31-37) or to coextrude the two layer as such is a well-known and conventional method of forming a bi-component strip.

Regarding claims 25 and 26, while the references do not indicate applying the anti-slip material as flakes or clots, one in the art would appreciate that any conventional coating method could be used to apply the material.

Response to Arguments

11. Applicant's arguments filed 5/11/04 have been fully considered but they are not persuasive.

Regarding applicant's argument that Schulte is not prior art, applicant has clearly disclosed the reference is prior art in the specification, which indicates the reference is a known method. According to MEP 715, a clear admission on the record cannot be overcome by a declaration.

12. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Esler discloses coating a strip with another layer which prevents slippage of the strip relative to the material surrounding it.

Regarding applicant's argument that the wire of Maruyama is not directly engaged with the foam, the wire performs the same function, i.e. it holds the cover in place. While it does not directly contact the foam, it does contact have non-slip properties.

13. In response to applicant's argument that Tolle is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, the reference is reasonably pertinent to applicant's problem, the prevention of slip between two materials.

14. In response to applicant's argument that Engelson is nonanalogous art, the reference is to show what is well-known and conventional in the art. While not in

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applicant's field of endeavor, this reference shows what is conventional in coating, which is reasonably pertinent to applicant's invention as applicant's invention is coating a strip.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Barbara J. Musser whose telephone number is (571) 272-1222. The examiner can normally be reached on Monday-Thursday; alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Blaine Copenheaver can be reached on (571)-272-1156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


BJM


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